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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,214	04/16/2004	Michael Shantz	50040-048	7264

7590 12/29/2005  
MCDERMOTT, WILL & EMERY  
600 13th Street, N.W.  
Washington, DC 20005-3096

EXAMINER
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RICCI, JOHN A

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/825,214

Applicant(s)

SHANTZ, MICHAEL

Examiner

John Ricci

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24 is/are allowed.
- 6) ☒ Claim(s) 1-5, 15 and 20-23 is/are rejected.
- 7) ☒ Claim(s) 6-14 and 16-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/16/04, 4/11/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

Application/Control Number:  
10/825,214  
Art Unit: 3711

Page 2

Applicant is requested to update the application number referred to in paragraph 30.

\* \* \* \* \*

Figure 1A-1C should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

\* \* \* \* \*

Claims 20-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly

Application/Control Number:  
10/825,214  
Art Unit: 3711

Page 3

point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 20, line 12, there is no antecedent for the "propeller connector".

\* \* \* \* \*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5 & 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Reynolds et al 6,550,715.

Reynolds shows a flying toy including a longitudinal frame 14 having a wing 24A and a stabilizer 24B; a propeller 22 at an end of the frame; motor 18; and propeller protector 34 extending around and beyond the propeller and connected by struts 32 to the frame.

Application/Control Number:  
10/825,214  
Art Unit: 3711

Page 4

\* \* \* \* \*

Claims 6-14 & 16-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 20-23 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claim 24 is allowed.

With regard to claim 20, the prior art does not disclose a toy airplane including a frame, a motor and propeller attached to the frame; the frame including a main longitudinal element and a wing support structure including a vertical wing fore strut, a horizontal wing fore strut, rear struts, and chordal struts; and a propeller protector including a rod extending around and beyond the propeller, and being connected to the wing support structure or main longitudinal element by a plurality of struts.

Application/Control Number:  
10/825,214  
Art Unit: 3711

Page 5

With regard to claim 24, the prior art does not disclose a toy airplane including a propeller mounted on a center axis; a frame placed forward of and around the propeller; struts connected between the frame and a frame member of the airplane, wherein a distance between the connection between the struts and the frame member and the center axis is less than a distance between the frame and the center axis.

\* \* \* \* \*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

\* \* \* \* \*

This letter was prepared by Examiner John Ricci, who can be reached at:

Voice: 571-272-4429

Fax: Use 571-273-8300 for papers to be delivered directly to the mail room, like formal amendments and responses, change of address, power of attorney, petitions.

Application/Control Number:  
10/825,214  
Art Unit: 3711

Page 6

Use 703-783-0439 for papers to be delivered directly to the Examiner, like informal or proposed responses for discussion, or notes in preparation for an interview.

*Response by Fax is encouraged to reduce mail processing time. Please don't send duplicate papers by mail and Fax.*

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**JOHN RICCI  
PRIMARY EXAMINER  
ART UNIT 3711**